

HOUSE BILL NO. 610

INTRODUCED BY COBB

IN THE HOUSE

FEBRUARY 8, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON RULES.
FEBRUARY 9, 1989	FIRST READING.
FEBRUARY 15, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 16, 1989	PRINTING REPORT.
FEBRUARY 18, 1989	SECOND READING, DO PASS.
FEBRUARY 20, 1989	ENGROSSING REPORT.
FEBRUARY 21, 1989	THIRD READING, PASSED. AYES, 55; NOES, 42.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
	FIRST READING.
MARCH 17, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 20, 1989	SECOND READING, CONCURRED IN.
MARCH 22, 1989	THIRD READING, CONCURRED IN. AYES, 40; NOES, 9.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 22, 1989	RECEIVED FROM SENATE.
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SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO DELETE THE
5 REQUIREMENT THAT CERTAIN BILLS PASSED BY THE LEGISLATURE
6 MUST CONTAIN AN EXTENSION OF EXISTING RULEMAKING AUTHORITY
7 BEFORE THE SECTIONS OF THE BILL MAY BE IMPLEMENTED BY RULE;
8 AMENDING SECTIONS 2-4-305, 5-4-402, AND 5-4-404, MCA; AND
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
10 APPLICABILITY DATE."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 2-4-305, MCA, is amended to read:

14 "2-4-305. Requisites for validity -- authority and
15 statement of reasons. (1) The agency shall consider fully
16 written and oral submissions respecting the proposed rule.
17 Upon adoption of a rule, an agency shall issue a concise
18 statement of the principal reasons for and against its
19 adoption, incorporating therein its reasons for overruling
20 the considerations urged against its adoption. If
21 substantial differences exist between the rule as proposed
22 and as adopted and the differences have not been described
23 or set forth in the adopted rule as that rule is printed in
24 the Montana administrative register, the differences must be
25 described in the statement of reasons for and against agency

1 action. When no written or oral submissions have been
2 received, an agency may omit the statement of reasons.

3 (2) Rules may not unnecessarily repeat statutory
4 language. Whenever it is necessary to refer to statutory
5 language in order to convey the meaning of a rule
6 interpreting the language, the reference shall clearly
7 indicate that portion of the language which is statutory and
8 the portion which is amplification of the language.

9 (3) Each proposed and adopted rule shall include a
10 citation to the specific grant of rulemaking authority
11 pursuant to which it or any part thereof is adopted. A rule
12 ~~proposed--and--adopted-to-implement-a-statute-referred-to-in~~
13 ~~5-4-402(3)--must-include-a-citation-to-the--session--laws--of~~
14 ~~Montana---containing---the---specific--grant--of--rulemaking~~
15 ~~authority-pursuant-to--which--it--or--any--part--thereof--is~~
16 ~~adopted-~~ In addition, each proposed and adopted rule shall
17 include a citation to the specific section or sections in
18 the Montana Code Annotated which the rule purports to
19 implement.

20 (4) Each rule proposed and adopted by an agency
21 implementing a policy of a governing board or commission
22 must include a citation to and description of the policy
23 implemented. Each agency rule implementing a policy, as used
24 in the definition set forth in 2-4-102(10), and the policy
25 itself must be based on legal authority and otherwise comply

1 with the requisites for validity of rules established by
2 this chapter.

3 (5) To be effective, each substantive rule adopted must
4 be within the scope of authority conferred and in accordance
5 with standards prescribed by other provisions of law.

6 (6) Whenever by the express or implied terms of any
7 statute a state agency has authority to adopt rules to
8 implement, interpret, make specific, or otherwise carry out
9 the provisions of the statute, no rule adopted is valid or
10 effective unless:

11 (a) consistent and not in conflict with the statute;
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13 (b) reasonably necessary to effectuate the purpose of
14 the statute. Such reasonable necessity must be demonstrated
15 in the agency's notice of proposed rulemaking and in the
16 written and oral data, views, comments, or testimony
17 submitted by the public or the agency and considered by the
18 agency.

19 (7) No rule is valid unless adopted in substantial
20 compliance with 2-4-302 or 2-4-303 and this section and
21 unless notice of adoption thereof is published within 6
22 months of the publishing of notice of the proposed rule. If
23 an amended or supplemental notice of either proposed or
24 final rulemaking, or both, is published concerning the same
25 rule, the 6-month limit must be determined with reference to

1 the latest notice in all cases."

2 **Section 2.** Section 5-4-402, MCA, is amended to read:

3 **"5-4-402. Purpose.** (1) The legislature finds that it
4 must accept the ultimate responsibility for the increase in
5 the discretionary authority of state executive branch
6 agencies, as evidenced by proliferating rules, forms,
7 orders, and licensing proceedings before state agencies.

8 (2) The purpose of this Legislative History Act is to
9 assure that statutes henceforth enacted to grant additional
10 discretionary authority to state agencies are accompanied by
11 a clear indication of the legislature's intent as to how
12 such discretion is to be exercised and the legislature's
13 purpose for delegating the authority.

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18 ~~extending such authority to the statute as enacted or~~
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20 **Section 3.** Section 5-4-404, MCA, is amended to read:

21 **"5-4-404. Statement of intent.** The legislature by its
22 joint rules shall provide a procedure by which a statement
23 of legislative intent shall be included with each bill
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25 ~~delegation of authority referred to in 5-4-402(3),~~ and may

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2 placed before each component of the legislature which
3 sequentially considers the subject bill and may be amended
4 in the same manner as the bill."

5 NEW SECTION. **Section 4.** Effective date --
6 applicability. (1) [This act] is effective on passage and
7 approval.

8 (2) [Sections 1 and 2] apply retroactively, within the
9 meaning of 1-2-109, to October 1, 1983, and apply to
10 statutes enacted and rules adopted on or after October 1,
11 1983.

-End-

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